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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

RADFORD VENTURES, LLC, Plaintiff and Appellant, v. SOUTHERN CALIFORNIA GAS COMPANY, Defendant and Respondent.	G051763 (Super. Ct. No. 30-2011-00508767) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Kirk H. Nakamura, Judge. Affirmed as modified.

Peter D. Collisson for Plaintiff and Appellant.

Jones, Bell, Abbott, Fleming & Fitzgerald, William M. Turner and Asha Dhillon; Rachel M. Lamothe for Defendant and Respondent.

INTRODUCTION

Appellant Radford Ventures, LLC, returns to this court after having prevailed in an earlier appeal. At issue in the first appeal was whether Southern California Gas Company could install an above-ground gas meter serving a neighbor's business on Radford's land. After a one-day bench trial, the court found for the Gas Company.

We reversed the judgment. We held that an easement "for street purposes" granted to the City of Laguna Beach (the City) decades ago did not include the right to put somebody else's gas meter on Radford's property. Because the Gas Company derived its easement rights from the City, it had no greater rights.

The case returned to the trial court. Radford moved for summary judgment on what it referred to as the remaining causes of action. The Gas Company, in its turn, moved for entry of a judgment consistent with our opinion. The trial court granted the Gas Company's motion and took Radford's summary judgment motion off calendar. Radford has now appealed from this second judgment.

We affirm the trial court's second judgment with a slight modification. The first judgment was a final one; it disposed of the entire controversy between Radford and the Gas Company. If the court's findings were somehow incomplete, it was Radford's responsibility to bring this defect to the trial court's attention. Likewise, the issues presented to us in the first appeal were clearly identified. The issues Radford has raised in this appeal are different from those we were asked to consider the first time around. We do not entertain in appeal number two issues that should have been included in a prior appeal.

FACTS

Radford sued the Gas Company and the City in September 2011, after a meter servicing a neighboring parcel was installed on Radford's property. The causes of

action alleged were nuisance, negligence, quiet title, and declaratory relief. The Gas Company maintained it had obtained easement rights from the City in an alley behind the two parcels that permitted it to install the meter as it had done.

During discovery, the Gas Company produced a document dated 1936, dubbed the "wild deed," granting the City an easement "for all of the uses and purposes of a public street or alley" along parts of two lots owned at the time by the Gas Company's predecessor. The document also provided, "It is understood and agreed that this grant shall apply only to such portions of the property herein described or such interest therein as is now owned by grantors." Radford sought and received permission to amend its complaint to assert a fifth cause of action, for slander of title, based on this document. Radford alleged that the wild deed was recorded in the Office of the County Recorder, but did not appear in a title search for its own property. It allegedly purported to transfer rights in Radford's property that the grantor did not have and cast a cloud on Radford's title.

The case was tried to the court during one day in October 2012. Some witnesses mentioned the wild deed in their testimony. At the end of trial, the court orally rendered judgment in favor of the Gas Company. No one had asked for a statement of decision,[1] and the court's ruling addressed only two issues: the statute of limitations on Radford's "trespass" and injunctive relief causes of action and whether the Gas Company had easement rights allowing it to install the meter on Radford's property.[2] The court held that Radford's trespass causes of action were barred, but not the request for injunctive relief. The court then held that the easement the Gas Company obtained from the City allowed it to put the above-ground gas meter partially on Radford's property.

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[1] See California Rules of Court, rule 3.1590(n).

[2] The first cause of action was entitled "nuisance"; it alleged that the gas meter harmed Radford's property. The second cause of action was entitled "negligence," and it alleged a breach of the duty of care to refrain from trespass.

The court did not specifically mention the wild deed or Radford's causes of action for quiet title or slander of title. No one asked the court to rule separately on each of the five causes of action. The judgment stated merely that judgment was entered in favor of the Gas Company and against Radford.[3]

Radford appealed, and we reversed in an unpublished opinion.[4] We held easements granted to the City "for street purposes" did not encompass a right to put a gas meter serving one private customer on another customer's private property. Since the Gas Company could not obtain greater rights from the City than the City itself possessed, the Gas Company did not have the right to put the meter where it had. We agreed with the trial court that the causes of action based on trespass were barred by Code of Civil Procedure section 338, subdivision (b), and that Radford's request for injunctive relief was not time-barred.

Radford mentioned the wild deed in the first appeal only in connection with its larger argument that the Gas Company did not have an easement allowing it to install the meter on Radford's property. It mentioned slander of title only to argue the limitations period had not run on this cause of action.

The case went back to the trial court. Evidently the Gas Company relocated the meter. Radford moved for summary judgment on all the causes of action: nuisance, negligence, quiet title, declaratory relief, and slander of title. It acknowledged that some claims for damages were time-barred. The Gas Company, for its part, moved

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[3] The written judgment entered after the trial stated, "Judgment is entered in favor of defendant, Southern California Gas Company, and against plaintiff, Radford Ventures, LLC, and Southern California Gas Company, may recover costs pursuant to Code of Civil Procedure section 1032 and 1033, and per Memorandum of Costs." The judgment also noted that the trial lasted less than eight hours.

[4] *Radford Ventures v. S. Cal. Gas Co.* (Mar. 12, 2014, G047982) [nonpub. opn.] (*Radford I*).]

for judgment pursuant to the holdings of *Radford I*.[5] The trial court granted the Gas Company's motion and took Radford's summary judgment motion off calendar.

The trial court entered the new judgment on February 25, 2015: "1. Judgment is entered in favor of Plaintiff Radford Ventures, LLC, and against Defendant Southern California Gas Company with respect to the easement such that Defendant The Gas Company is ordered to remove the gas meter it installed on the Plaintiff's property. Each of the causes of action, except injunction, are barred by the three-year statute of limitations (Cal. Civ. Proc. Code § 338)." A second paragraph awarded costs to Radford in the amount of $6,607. Radford has appealed from this judgment.

DISCUSSION

As a reviewing court, we do not range far and wide over the cases brought to us, looking for issues to discuss or errors to correct. Instead, we confine ourselves to the issues the parties have identified. This restraint is in keeping with one of the basic principles of appellate review: the judgment is presumed correct, and the appellant must demonstrate error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *Aulisio v. Bancroft* (2014) 230 Cal.App.4th 1516, 1526-1527.) A corollary of this principle is that an issue not properly raised on appeal, usually within the confines of the appellant's opening brief, is deemed abandoned. (See *Behr v. Redmond* (2011) 193 Cal.App.4th 517, 538 [failure to brief issue constitutes abandonment of issue on appeal]; *Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979 [court not required to consider points not argued].)

The trial court's judgment in *Radford I* determined *all* the issues raised by the pleadings. "A judgment is the final determination of the rights of the parties in an action or proceeding." (Code Civ. Proc., § 577.) "[T]here can be but one judgment in an action as between the same parties and that is a judgment which determines all matters in

[5] In its motion, the Gas Company put an interesting gloss on *Radford I*. It asked the trial court to enter judgment in the *Gas Company*'s favor, on the grounds that the request for injunctive relief was now moot (because the meter was gone) and we had found it its favor on all the other causes of action.

controversy between them in the action." (*Pastor v. Younis* (1965) 238 Cal.App.2d 259, 264.) "[T]here cannot be piecemeal disposition of several counts in a complaint which are all addressed against the same defendants." (*Gombos v. Ashe* (1958) 158 Cal.App.2d 517, 520, disapproved on other grounds in *Taylor v. Superior Court* (1979) 24 Cal.3d 890.)

The trial court's oral ruling from the bench after trial concentrated on two issues: the limitations periods and the Gas Company's right to install the meter partially on Radford's property. After deciding the limitations issue, the trial court stated, "The issue as you have all identified it is: to what extent can a possessor of an easement put an aboveground gas meter based upon an easement that provides the easement holder has the right to use it as a public street?" The court then decided this issue in the Gas Company's favor, stating "I have to hold in favor of the defense in this case." No one asked for separate rulings on each of the causes of action.

Nor were we asked in *Radford I* to address causes of action such as quiet title or slander of title as independent causes of action, that is, as bearing on anything but the proper placement of the gas meter. Slander of title was discussed only as to the effect of the statute of limitations. Quiet title was not discussed at all as a separate cause of action.

A judgment that is silent about part of the relief sought is a denial of that part of the relief. (*Daniels v. Daniels* (1956) 143 Cal.App.2d 430, 439.) The trial court's judgment became final without any protest of incompleteness by Radford, and we reviewed the portion of the judgment Radford identified as erroneous. This did not include examining the implied denial of relief for slander of title, which, as Radford's counsel himself recognized, involved substantive rights different from those implicated

by the gas meter.[6] "In such a case the trial court lacks jurisdiction to redetermine that part of the judgment which has become final[.]" (*Burgermeister Brewing Corp. v. Superior Court* (1961) 195 Cal.App.2d 368, 370-371.)

The elements of a cause of action for slander of title are a false and unprivileged or unjustified publication that causes pecuniary loss. (*La Jolla Group II v. Bruce* (2012) 211 Cal.App.4th 461, 472.) Radford's cause of action for slander of title was based exclusively on the wild deed. The focus of this cause of action was not something going on in the alley behind Radford's property. It was rather something happening in the Office of the County Recorder – a publication Radford claimed was false, unprivileged, and damaging.

The trial court did not rule on slander of title, and we said nothing about it in *Radford I*. *Radford I* can be deemed to conclude that none of the easements for street purposes presented at trial – including the wild deed – granted the Gas Company the right to put a meter serving a neighboring business on Radford's property. Further than that, however, we were not asked to go. From an appellate standpoint, any issue regarding these causes of action as asking for something more than relief regarding the placement of the gas meter was abandoned, and the denial of additional relief implied by the trial court's silence stood unchallenged.

Radford argues in this appeal that it had no opportunity to raise these additional issues until the case was sent back for a new judgment. This is incorrect. The most obvious opportunity was at the trial's conclusion. The court could have been reminded that the allegations of the first amended complaint were not limited to the effect of the easements on the gas meter, but encompassed slander of title and others more broadly based. The omission of a ruling on the entirety of the complaint could have been

[6] Radford's counsel acknowledged the difference at trial, saying "There are really two different issues. One is the slander [of] title claim in the fifth cause of action. . . . [¶] The other four causes of action all relate to the installation of the subject gas meter in 2008."

made part of the appeal in *Radford I*, and we could have dealt with it then (including whether the issue had been forfeited by failing to raise it below). Finally, as a last gasp, Radford could have requested a rehearing in our court on the ground that the *Radford I* disposition omitted a material issue. (See *Ducoing Management, Inc. v. Superior Court* (2015) 234 Cal.App.4th 306, 314; Cal. Rules of Court, rule 8.268.) Radford had several opportunities to bring up issues other than the effect of the easements on the gas meter before *Radford I* became final.

In the prior appeal, Radford also raised the issue of the limitations periods, and we addressed this additional issue in our opinion. Before turning to the question of the easements, the trial court had ruled that "[i]nsofar as this case was characterized as an action for trespass, it is clear that it is not timely." The court further held, "[I]nsofar as this case is requesting injunctive relief to enjoin the Gas Company from trespassing on [Radford's] property, this action is timely." In *Radford I*, we agreed with the trial court's rulings on the limitations periods. The question now before us is what effect this agreement should have had on the judgment the trial court was to enter following reversal.

The first amended complaint did not include a cause of action labeled "trespass"; the closest cause of action was one for nuisance.[7] "California's definition of trespass is considerably narrower than its definition of nuisance. '"'A trespass is an invasion of the interest in the exclusive possession of land, as by entry upon it . . . . A nuisance is an interference with the interest in the private use and enjoyment of the land and does not require interference with the possession."' [Citations omitted.]" (*Capogeannis v. Superior Court* (1993) 12 Cal.App.4th 668, 674.) Or, as Dean Prosser put it much more colorfully, "'The difference is that between walking across [the

[7] The caption of the first amended complaint included "trespass" in the list of causes of action. The body of the complaint, however, labeled the cause of action "nuisance," and referred to Civil Code section 3479, which includes "an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property" in the definition of "nuisance."

plaintiff's] lawn and establishing a bawdy house next door; between felling a tree across his boundary line and keeping him awake at night with the noise of a rolling mill.' [Citation.]" (*Wilson v. Interlake Steel Co.* (1982) 32 Cal.3d 229, 233.) A tort action for trespass must be based on some physical invasion of the property. (*Id.* at pp. 232-233.)

The trial court's characterization of Radford's lawsuit as one for trespass was correct as far as it went. Radford *was* complaining about unauthorized entry on its

land. The causes of action for nuisance, negligence, quiet title, and declaratory relief all referred to "above-ground improvements" wrongfully installed by the Gas Company on Radford's property. The only "above-ground improvement" mentioned during the trial was the gas meter. The court's ruling in the Gas Company's favor on the limitations issue was confined to those causes of action based on "trespass." Once again, the trial court was not asked to rule separately on the timeliness of individual causes of action.

In the first appeal, Radford interpreted the trial court's ruling to bar those causes of action asking for damages. In light of the court's distinction between "trespass" and injunctive relief for trespass, this interpretation appears to be correct.[8] It is, moreover, the one we adopted in *Radford I*.

This interpretation, however, does not dispose of the entire complaint. The causes of action for quiet title[9] and declaratory relief do not necessarily include a request for damages. A cause of action for slander of title includes a request for damages, but it is not based on an invasion of interest in possession of land or physical entry on it. The trial court's rulings left these causes of action up in the air as to whether they were time-barred, and this omission was not raised on appeal in *Radford I*. We therefore had no occasion to address it, and our opinion in that case cannot be deemed to have determined whether causes of action not based on damages for trespass were time-barred.

The trial court's judgment on remand therefore exceeded the scope of *Radford I* in this one particular. The expiration of the limitations periods for causes of action *not* seeking damages for trespass was not identified as an issue before us, and we made no determination about it. By including a provision that all causes of action except injunctive relief were time-barred, the trial court went beyond its original findings and

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[8] Radford has subsequently acknowledged that its request for damages for trespass is barred.

[9] See Code of Civil Procedure sections 760.010 et seq.

beyond our holdings in *Radford I*. The final judgment must therefore be adjusted to reflect both what occurred at trial and the scope of *Radford I*.

DISPOSITION

The judgment entered on February 25, 2015, is affirmed with the following modification: the last sentence of paragraph 1 ("Each of" to "Code § 338") is ordered stricken. The sentence, "The causes of action for damages based on trespass in the first amended complaint are time-barred." is to be substituted in its place. Respondent is to recover its costs on appeal.

BEDSWORTH, J.

WE CONCUR:

O'LEARY, P. J.

RYLAARSDAM, J.